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No. 86-476

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Petitioner,

v.

STATEN ISLAND RAILROAD CORPORATION,
STATEN ISLAND RAILWAY CORPORATION,
INTERSTATE COMMERCE COMMISSION, AND
UNITED STATES OF AMERICA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT STATEN ISLAND RAILROAD CORPORATION'S BRIEF IN OPPOSITION

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December 24, 1986

QUESTION PRESENTED

Whether a request to vacate or modify an Interstate Commerce Commission ordered sale of a railroad falls within the exclusive jurisdiction of the courts of appeal, pursuant to 28 U.S.C. §§ 2321 and 2342.

RULE 28.1 LIST

Respondent Staten Island Railroad Corporation ("SIRC") is a subsidiary of the Baltimore and Ohio Railroad Company ("B&O"). The Baltimore and Ohio Railroad Company is a wholly-owned subsidiary of the Chesapeake and Ohio Railway ("C&O") which in turn is a wholly-owned subsidiary of CSX, Inc. Subsidiaries and affiliates of CSX, Inc. are listed in Appendix A.

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RESPONDENT STATEN ISLAND RAILROAD CORPORATION'S BRIEF IN OPPOSITION

Respondent Staten Island Railroad Corporation ("SIRC") respectfully requests that this Court deny the petition for writ of certiorari submitted by the Railway Labor Executives' Association ("RLEA"), seeking review of the Second Circuit's decision reported at 792 F.2d 7 (2d Cir. 1986) [hereinafter cited as "*RLEA v. SIRC*"].

COUNTERSTATEMENT OF THE CASE

SIRC's Operations

Until April 24, 1985, the Staten Island Railroad Corporation operated 31.16 miles of track, of which it owned 16.68 miles and had trackage rights over the remainder. J.A. 86[1] SIRC employed 31 persons, who were represented by ten different unions. J.A. 92-93. Many of these employees were covered by labor protective provisions in five of SIRC's labor agreements. J.A. 96-97, 115-116. These provisions provided for monthly wage guarantees for up to five years in the event their jobs were abolished by virtue of the abandonment or cessation of SIRC's operations. *Id.*

ICC Proceedings

For several years SIRC's operations had been unprofitable, resulting in a deficit of $28.4 million by November, 1984; it therefore determined to abandon them completely. J.A. 87. As a common carrier by railroad subject to the exclusive jurisdiction of the Interstate Commerce Commission ("ICC"), SIRC had first to obtain regulatory approval to cease operations. So, on November 30, 1984, SIRC filed its notice of intention to abandon its entire operations as required by the ICC's regulations. J.A. 88. Subsequently, on

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1 References to "J.A." are to the joint appendix filed in the connection with RLEA's appeal in RLEA v. SIRC. References to "ICC/J.A." are to the joint appendix filed in RLEA's appeal from the ICC orders approving the sale of SIRC's operations. Certain materials common to both appeals were reproduced only in the latter joint appendix.

December 21, 1984, it filed an abandonment application with the ICC. *Id.*

Thereafter, on December 26, 1984, SIRC received a "Section 6" notice from one of its unions, the International Brotherhood of Electrical Workers ("IBEW"). J.A. 99-102. Under Section 6 of the Railway Labor Act ("RLA"), 45 U.S.C. § 156, a party to a collective bargaining agreement can initiate changes in agreements by serving a notice specifying the requested changes. Parties can use economic self-help to compel the change only after the RLA's bargaining, mediation and cooling off procedures have been exhausted. These procedures have been described by this Court as "purposefully long and drawn-out". *Brotherhood of Railway and Steamship Clerks v. Florida East Coast Railway*, 384 U.S. 238, 245 (1966).

The IBEW notice sought to amend its agreement with SIRC to require SIRC to give six months advance notice of the abandonment or sale of SIRC's lines, even though the union had actual and constructive knowledge that SIRC had already filed an abandonment application with the ICC. J.A. 101. The notice also sought to amend the agreement to provide for labor protective conditions identical to those imposed by the ICC in railroad abandonments or mergers. *Id.* These protections require that affected employees be paid their full wages for up to six years, even if there is no railroad work for them. Several other unions subsequently filed virtually identical notices. J.A. 103, 107, 110.

On January 14, 1985, SIRC met with IBEW to explain it did not believe the Section 6 notice was valid,

because the ICC had exclusive jurisdiction over the abandonment of rail lines. J.A. 95. SIRC's position was confirmed in a January 28, 1985 letter to IBEW. J.A. 95-96, 113-114. SIRC responded similarly to the other Section 6 notices. J.A. 96.

The ICC approved SIRC's complete abandonment by an order issued February 7, 1985. ICC/J.A. 67. Thereafter, the New York, Susquehanna and Western Railway ("NYSW") offered to purchase SIRC's track pursuant to the "forced sale" procedures of the Interstate Commerce Act ("ICA"), 49 U.S.C. § 10905. ICC/J.A. 69. Under the forced sale procedures, a carrier must sell lines approved for abandonment to any purchaser whom the ICC determines has made a bona fide offer. 49 U.S.C. § 10905(f)(2).[2] The ICC found that NYSW's offer was bona fide and ordered the sale of SIRC's lines to a company formed by NYSW to operate the acquired lines, the Staten Island Railway Corporation ("SIRY"), by an order issued April 24, 1985. ICC/J.A. 78-79. That order specified that "[a]pplicant [SIRC] *must* complete the sale so long as the buyer consummates." ICC/J.A. 78 (emphasis added). The ICC also authorized by separate order the transfer of SIRC's trackage rights to SIRY pursuant to Section 10901 of the ICA, 49 U.S.C. § 10901. ICC/J.A. 96-98.

SIRC's unions, acting through the RLEA, actively participated throughout these ICC proceedings and requested

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2 Section 10905's purpose and procedures are discussed in this Court's opinion in Hayfield Northern Railroad Co. v. Chicago & North Western Transportation Co., 467 U.S. 622 (1984).

the ICC, pursuant to the ICA, to impose labor protective conditions as a condition of any ICC order. The labor protections RLEA was seeking from the ICC were the same as those requested in the Section 6 notices served by SIRC's unions. When the ICC approved SIRC's abandonment, it attached its so-called *Oregon Short Line* conditions. ICC/J.A. 67-68. *See Oregon Short Line Railroad--Abandonment --Goshen*, 360 I.C.C.2d 91 (1979). After the ICC ordered the Section 10905 sale, in lieu of abandonment, it dismissed its prior abandonment approval. ICC/J.A. 78-79. It also dismissed the related labor protective conditions, following earlier precedent that Section 10905 did not authorize imposition of labor protective conditions on sales of rail lines. *See Simmons v. ICC*, 760 F.2d 126 (7th Cir. 1985), *cert. denied*, 106 S.Ct. 791 (1986). *Accord Simmons v. ICC*, 766 F.2d 1177 (7th Cir. 1985). The ICC also found that the public interest did not require the exercise of its discretionary authority to impose labor protective conditions on the transfer of SIRC's trackage rights under Section 10901. ICC/J.A. 120.

Upon issuance of the ICC orders, SIRY consummated the sale, and SIRC transferred its lines and operations to SIRY. SIRY immediately commenced operations in order to preserve continuous service. ICC/J.A. 80. SIRC ceased to be a railroad at that time. SIRC also then abolished all of its job positions, since it no longer owned or operated a railroad. J.A. 96. SIRC had previously notified its employees individually that their positions would be abolished upon issuance of the required ICC approvals. *Id.*

Officials from the new operator's parent, NYSW, met with SIRC's employees on April 25, 1985 and offered employment to eighteen on the SIRY and NYSW. J.A. 121. However, as of May 1, 1985, only five had accepted offers. J.A. 122.

District Court Proceedings

Although SIRC's position that the Section 6 notices were not bargainable was made clear and unequivocal as early as January 14, 1985, RLEA chose to wait more than four months later, after the ICC orders had issued and after the sale had been consummated, before seeking a temporary restraining order and preliminary injunction in the United States District Court for the Eastern District of New York. J.A. 3-14. SIRC opposed RLEA's request to unscramble the sale and reinstate SIRC's employees on the bases that RLEA was, in effect, attempting a collateral attack on the ICC order mandating the sale; the ICC had exclusive jurisdiction over the sale; and, in any event, the sale did not violate employees' rights under the RLA or existing collective bargaining agreements. SIRC also argued that RLEA had failed to meet the standards for injunctive relief. Judge Sifton found that the relief RLEA was requesting could not be granted "without having the improper effect of reversing or modifying the ICC order." *RLEA v. SIRC*, No. CV-85-1532 (E.D.N.Y. May 21, 1985) (J.A. 26). He concluded that, under 28 U.S.C. §§ 2321(a) and 2342, since only the courts of appeal have jurisdiction to review, modify, stay or set aside ICC orders, RLEA's claim must be dismissed for lack of subject matter jurisdiction. *Id.*

Second Circuit Proceedings

RLEA separately appealed Judge Sifton's decision and the ICC orders approving the sale of SIRC's business. The Second Circuit affirmed the ICC's orders and its refusal to require labor protective conditions. *Railway Labor Executives' Association v. U.S.*, 791 F.2d 994 (2d Cir. 1986) [hereinafter cited as *"RLEA v. U.S."*]. RLEA does not seek certiorari from this decision. With respect to RLEA's appeal from Judge Sifton's opinion, the Second Circuit concluded that "[u]nder no circumstances could [RLEA's] request be granted without recission or modification of the ICC's order." *RLEA v. SIRC*, 792 F.2d at 12.[3] The Second Circuit affirmed his decision in all aspects, except to specify that RLEA's complaint should have been dismissed for failure to state a claim rather than for lack of subject matter jurisdiction. *Id.* at 11. This petition for a writ of certiorari followed.

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3 The ICC intervened in RLEA's appeal of Judge Sifton's decision and argued against RLEA's attempt to attack collaterally its orders in the District Court.

REASONS WHY THE PETITION SHOULD BE DENIED

This case presents the straightforward question of whether a party to an ICC proceeding, in this case a labor organization, can seek to overturn or stay an ICC-ordered sale of rail lines in a federal district court, when Congress has provided that the courts of appeals have exclusive jurisdiction to stay, modify or enjoin ICC orders. The lower courts' resolution of that question does not warrant review by this Court. RLEA's request to the District Court to order SIRC to resume operations and reinstate its employees, after the ICC had ordered the sale of SIRC's lines and after that sale had been consummated, would have had the effect of modifying or enjoining the ICC order. The Second Circuit's decision that the District Court was without jurisdiction to order such a remedy was mandated by the express statutory requirement that ICC orders can only be set aside or modified by the courts of appeals. In addition, the Second Circuit's decision follows uniform precedent by this and other appellate courts that collateral attacks on ICC orders are not permitted.

Contrary to RLEA's erroneous assertion, the Second Circuit's decision does not conflict with this Court's decision in *Order of Railroad Telegraphers v. Chicago & North Western Railway*, 362 U.S. 330 (1960) or the Fifth Circuit's decisions in *United Industrial Workers v. Board of Trustees of Galveston Wharves*, 351 F.2d 183 (5th Cir. 1965) and 368 F.2d 412 (5th Cir. 1966) and 400 F.2d 320 (5th Cir. 1968), *cert. denied*, 395 U.S. 905 (1969) [hereinafter cited as "*Galveston Wharves*"]. Neither of those cases involved an

ICC-ordered transaction or the exclusive jurisdiction of courts of appeals to modify, stay or vacate ICC orders.

Other reasons advanced by RLEA also present no valid bais for Supreme Court review. The Second Circuit's decision does not ignore rights protected by the RLA. RLEA's complaint with the ICC's general policy of not imposing discretionary labor protective conditions, which occupies much of its petition, also provides no basis for review. If RLEA disagrees with the ICC's policy of not imposing discretionary labor protections on sales of rail lines, its remedy is to seek direct appellate review of the ICC's application of that policy (as it did in *RLEA v. ICC*) or to ask Congress to amend the Interstate Commerce Act to require imposition of labor protections in all sales of rail lines. RLEA's dissatisfaction with ICC policy does not, however, provide any basis for Supreme Court review of this case.

I. The Second Circuit's Determination That a District Court Cannot Set Aside or Stay an ICC-Ordered Sale Does Not Raise an Important Issue Requiring This Court's Attention

A. The Second Circuit's Decision Was Required by Statute and Was Consistent With Uniform Precedent That Collateral Attacks on Agency Orders Are Not Permitted

There is no question that the relief sought by RLEA in the District Court would have had the impermissible effect of overturning the ICC orders approving the sale of SIRC's track and trackage rights. RLEA was asking the District

Court to order the sale undone and the resumption of railroad operations by SIRC with its employees. Pursuant to those orders, however, SIRC had already sold its entire railroad operations. Only SIRY then had ICC authority to own and operate those lines. The relief requested would have necessarily rescinded, stayed or modified the ICC-ordered sale, since it would have required removal of SIRY as the operator of the tracks and restoration of SIRC. However, Section 2342 of Title 28 of the United States Code unequivocally provides that "[t]he court of appeals . . . has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of . . . final orders of the Interstate Commerce Commission. . . ." 28 U.S.C. § 2342(5). Thus, the only method provided by statute to stay, modify or enjoin an ICC order is to seek such relief in the appropriate court of appeals. 28 U.S.C. § 2321(a). Given these statutory requirements, the Second Circuit found that, although the District Court generally had jurisdiction over complaints under the RLA, 28 U.S.C. §§ 2321 and 2342 necessarily withheld jurisdiction from the District Court to grant the relief sought by RLEA -- rescission or modification of an ICC order. 792 F.2d at 11-12. This holding was required by the express terms of 28 U.S.C. §§ 2321 and 2342, the terms of which RLEA ignores.

The lower courts' holdings were also consistent with uniform precedent by this and other courts that, where Congress has established a mechanism for appellate review of agency orders, as it has for ICC orders, these orders cannot

be collaterally attacked in some other forum.[4] In *Venner v. Michigan Central Railroad*, 271 U.S. 127, 130 (1926), this Court affirmed that a state court action could not be used to set aside an ICC order. At that time, Congress had provided that review of ICC orders could only be had in federal district court. Every circuit court of appeals faced with this issue has similarly held that ICC orders can only be enjoined or modified only as provided by Congress. *See, e.g., Brotherhood of Locomotive Engineers v. Boston and Maine Corp.*, 788 F.2d 794, 801 (1st Cir.), *cert. denied*, 55 U.S.L.W. 3232 (U.S. Oct. 10, 1986) (No. 85-2153); *Assure Competitive Transportation, Inc. v. U.S.*, 629 F.2d 467, 471 (7th Cir. 1980), *cert. denied*, 449 U.S. 1124 (1981); *B.F. Goodrich v. Northwest Industries, Inc.*, 424 F.2d 1349, 1353-54 (3d Cir.), *cert. denied*, 400 U.S. 822 (1970); *U.S. v. Southern Railway*, 380 F.2d 49, 53-54 (4th Cir. 1967); *U.S. v. Southern Railway*, 364 F.2d 86, 91 (5th Cir. 1966), *cert. denied*, 386 U.S. 1031 (1967).[5] As the Third Circuit recognized in *B.F. Goodrich v. Northwest Industries, Inc.*, 424 F.2d at 1353-54, "[t]he statutory procedure for review is applicable although an order is not directly attacked -- so long as the practical effect of a

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4 *See generally* Denberg v. U.S. Railroad Retirement Board, 696 F.2d 1193, 1196-97 (7th Cir. 1983), *cert. denied*, 466 U.S. 926 (1984) and cases cited therein.

5 After 1975, Congress provided that ICC orders could only be modified by a court of appeals. Previously, such orders were subject to review by a three-judge district court. Assure Competitive Transportation, Inc. v. U.S., 629 F.2d 467, 472 n.6 (7th Cir. 1980), *cert. denied*, 449 U.S. 1124 (1981).

successful suit would contradict or countermand a Commission order."

The fact that RLEA styled its claims in RLA terms did not otherwise empower the District Court to modify an ICC order. In *Oling v. Air Line Pilots Association*, 346 F.2d 270 (7th Cir.), *cert. denied*, 382 U.S. 926 (1965) [hereinafter cited as "*Oling*"], the Seventh Circuit affirmed the district court's dismissal of a RLA complaint for lack of subject matter jurisdiction or failure to state a claim. In *Oling*, a group of pilots sought to enjoin, in district court, the implementation of a Civil Aeronautics Board ("CAB") approved integration of the pilot work forces of two airlines whose merger the CAB had approved. *Id.* at 272. Similar to *RLEA v. SIRC*, the *Oling* plaintiffs had unsuccessfully sought from the CAB the same labor protections which they later asserted in a district court complaint founded on the RLA. Like ICC orders, CAB orders were reviewable only in the courts of appeals. 49 U.S.C. § 1486. The Seventh Circuit concluded that, even though plaintiffs' RLA complaint was "in some instances couched in different phraseology," it was "in derogation of the well settled principle that collateral attacks upon administrative orders are not permissible." *Oling*, 346 F.2d at 276-77. Likewise, in *Brotherhood of Locomotive Engineers v. Boston and Maine Corp.*, 788 F.2d at 801, the First Circuit recently affirmed dismissal of a union's RLA claim and request for a status quo injunction as an impermissible collateral attack on the implementation of an ICC -approved lease of a rail line. *See also IAM v. Northeast Airlines, Inc.*, 473 F.2d 549, 559-60 (1st Cir.), *cert. denied*, 409 U.S. 845 (1972) (CAB jurisdiction over airline merger

precluded RLA status quo injunction); *Alabama Electric Cooperative, Inc. v. U.S.*, 574 F. Supp. 27 (M.D. Ala. 1983) (complaint to enforce state utility commission order would impermissibly invalidate ICC order).

Given the express statutory commands of 28 U.S.C. §§ 2321 and 2342, and the uniform appellate precedent, there is absolutely no basis for RLEA's claim that the Second Circuit's decision presents an issue for this Court.[6] RLEA has cited no authority where a federal district court, under its general jurisdiction, has enjoined or stayed an ICC-ordered sale of rail lines.

B. The Second Circuit's Decision Was Not Inconsistent with This Court's Decision in *Order of Railroad Telegraphers*

RLEA argues that the Second Circuit's decision was in conflict with this Court's opinion in *Order of Railroad Telegraphers v. Chicago & North Western Railway*, 362 U.S. 330 (1960) [hereinafter cited as "*Order of Railroad Telegraphers*"]. However, as RLEA is the first to concede, *Order of*

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6 And, contrary to RLEA's argument, Pet. at 18, the Second Circuit's decision that district courts have jurisdiction to consider RLA complaints does not create a judicial exception to 28 U.S.C. § 2321(a). The only exception to court of appeals jurisdiction to review ICC orders is prescribed by statute. A district court has jurisdiction to *enforce* ICC orders. 28 U.S.C. § 1336(a). District courts also have jurisdiction over ICC orders relating to the payment of money. *Id.* This exception has been narrowly construed and does not permit a collateral attack on ICC orders. *See* Island Creek Coal Sales Co. v. ICC, 561 F.2d 1219, 1222 (6th Cir. 1977).

Railroad Telegraphers "is not squarely on point." Pet. at 17. Indeed, *Order of Railroad Telegraphers* did not involve a challenge to an ICC-ordered transaction or 28 U.S.C. §§ 2321 or 2342 and is therefore inapplicable to the present situation. *Order of Railroad Telegraphers* involved efforts by a railroad to close down unneeded railroad stations and combine their activities with other stations. The railroad argued that, because it had applied to various state agencies to abandon these stations, it did not have to bargain with the union before abolishing positions at stations to be abandoned. A majority of the Court held that the railroad had a duty to bargain over job security. The case did not involve the well-settled principle that ICC orders can only be modified in the manner prescribed by Congress.

RLEA also relies upon *Detroit & Toledo Shore Line Railroad v. United Transportation Union*, 396 U.S. 142 (1969). Pet. at 17-18. That decision also did not involve an ICC-ordered transaction.

C. Pending Cases Do Not Support Review of the Second Circuit's Decision

Other cases pending before this Court referenced by RLEA do not support granting certiorari in the instant case, which must be considered in its own regard. RLEA first cites *Brotherhood of Locomotive Engineers v. ICC*, 761 F.2d 714 (D.C. Cir. 1985), *cert. granted*, 106 S.Ct. 1457 (1986) (Nos. 85-792 and 85-793). While that case involves railroads and unions, its similarity to this case ends there. That case involved a direct appeal of ICC orders to the court of appeals, not the jurisdiction of a district court to invalidate such

orders. *Brotherhood of Locomotive Engineers v. ICC*, No. 85-997 and *United Transportation Union v. ICC*, No. 85-983, also relied upon by RLEA, merely involve cross petitions for certiorari in that same proceeding. *United Transportation Union v. Missouri Pacific Railroad*, 782 F.2d 107 (8th Cir.) *petition for cert. filed*, 54 U.S.L.W. 3463 (U.S. Jan. 14, 1986) (No. 85-1054), involves the authority of a district court, under the Norris-LaGuardia Act, to enjoin a threatened rail strike. *Brotherhood of Locomotive Engineers v. Boston and Maine Corp.*, 788 F.2d 794 (lst Cir.), *cert. denied*, 55 U.S.L.W. 3232 (U.S. Oct. 10, 1986) (No. 85-2153), discussed previously, also does not support RLEA. This Court denied certiorari in that case, where the union petitioner, like RLEA, argued that *Order of Railroad Telegraphers* empowered a district court to enjoin an ICC order. Petition for a Writ of Certiorari of Brotherhood of Locomotive Engineers at 11-12.

RLEA also cites *Burlington Northern Railroad v. Brotherhood of Locomotive Engineers*, No. 84-5013 CV-SWO (W.D.Mo. Aug. 29, 1986) and *RLEA v. Chicago & North Western Transportation Co.*, No. 3-86-738 (D.Minn. Aug. 27, 1986) as examples of why this Court should grant certiorari. Pet. at 15. However, these rulings were consistent with the uniform precedent that injunctions of ICC-ordered transactions can only be had in the court of appeals. The fact that RLEA and its member unions filed lawsuits in contravention of express statutory commands and long-standing

judicial precedent following that statute cannot be used to manufacture an issue for this Court.[7]

D. Second Circuit's Holding Does Not Ignore Railway Labor Act Rights

RLEA also asserts that the Second Circuit failed to consider rights protected by the RLA. Pet. at 12, 18. This is not so. The Second Circuit expressly recognized the role of the RLA by making its one modification to Judge Sifton's decision. The Second Circuit modified his holding to specify that RLEA's complaint should be dismissed for failure to state a claim upon which relief can be granted. The Court of Appeals explained this modification as follows: "it is clear that a district court generally has jurisdiction to enjoin [a] carrier from violations [of the RLA]. Consequently, we find the District Court's classification of its basis for dismissal inconsistent with the provisions of the RLA." *RLEA v. SIRC*, 792 F.2d at 11 (citations omitted). Thus, contrary to RLEA's sweeping and erroneous assertions, it was not deprived of a forum to assert RLA rights. It had access to the District Court. SIRC believes RLEA's district court claims were without merit, because the initiation of ICC abandonment proceedings preempted any duty to bargain over the Section 6 notices, and, in any event, the status quo at the time SIRC

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7 Moreover, as RLEA's petition indicates, both rulings denied requests for temporary restraining orders. Given the preliminary nature of such rulings, they hardly present issues for this Court. If the union parties there believe that the TRO denials were improper, they can challenge their appropriateness in further proceedings and can seek appellate review from appealable orders in those cases.

filed for abandonment was that it had the right to cease operations and furlough its employees. The District Court, however, never had to reach these issues, because RLEA elected to wait until after the issuance of the ICC orders and consummation of the ICC-ordered sale to seek to enjoin the transfer of SIRC's operations. As the Second Circuit found, any of the relief sought by RLEA would necessarily have interfered with the ICC orders.

Furthermore, the balance of the RLA and ICA called for by RLEA, Pet. at 18, would ignore the express requirements of 28 U.S.C. § 2342 and usurp the ICC's exclusive jurisdiction over the sale or abandonment of rail lines.[8] Once a railroad has decided to go out of business, the ICC has exclusive jurisdiction over the terms and conditions of the cessation of its operations, including what additional labor protections, if any, will be imposed on that transaction. 49 U.S.C. § 10903.[9] Thereafter, unions are limited to labor

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8 RLEA's reliance on this Court's decision in Burlington Truck Lines, Inc. v. U.S., 371 U.S. 156 (1962) does not support its argument that a balancing of the RLA and ICA would empower a district court to enjoin an ICC order. Pet. at 15. That decision involved direct review of an ICC order, which, at that time, was before a three-judge district court. That decision also did not involve the RLA at all.

9 In Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co., 450 U.S. 311 (1981), this Court described the scope of the ICC's plenary authority as follows:

> The exclusive and plenary nature of the Commission's authority to rule on carriers' decisions to abandon lines is critical to congressional scheme, which contemplates comprehensive administrative regulation of interstate commerce . . . . The

protections granted by Congress or the ICC or contained in existing collective bargaining agreements. Otherwise, rail unions will be able to usurp the ICC's exclusive jurisdiction by asserting independent rights under the RLA, as they attempted in this case. The unions represented by RLEA here were seeking a fourth bite at the apple. During normal rounds of bargaining under the RLA, when SIRC was a going concern, they had the opportunity to bargain for labor protections.[10] Then, when the SIRC sought ICC approval to transfer its trackage rights to SIRY, they had the opportunity to seek imposition of discretionary labor protections by the ICC and judicial review of the ICC's actions. They have also requested Congress, both before and after the sale of SIRC's lines, to expand the Interstate Commerce Act's labor protection requirements. *See* note 11 *infra*. Now, after waiting until the ICC-ordered sale was consummated, they seek to undo the sale by asserting that they were entitled under the RLA to seek the same protections denied them by Congress and the ICC. Given the lengths Congress has gone to specify that rail abandonments and forced sales be governed by strict statutory timetables, *see* 49 U.S.C. §§ 10904, 10905, allowing RLEA to collaterally attack the ICC's orders would completely frustrate Congress' intent to "pro[tect] carriers

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breadth of the Commission's statutory discretion suggests a congressional intent to limit judicial interference with the agency's work. 450 U.S. at 321.

10 In fact, several unions bargained for and obtained protections by trading off other gains.

from protracted legal proceedings which are calculated merely to tediously extend the abandonment process." H.R. Rep. No. 96-1430, 96th Cong., 2d Sess. 125 (1980), *reprinted in* 1980 U.S. Code Cong. & Ad. News 4110, 4157. The lower courts were correct to find that injunctive relief was not available from a district court in these circumstances.

E. RLEA's General Dissatisfaction With the ICC's Discretionary Labor Protection Policies Does Not Provide a Basis for Review of the Second Circuit's Decision

Much of RLEA's petition is devoted to its general dissatisfaction with the ICC's labor protection policies in other proceedings. For example, RLEA refers to the "regionalization" of the nation's railroads, Pet. at 12-13, and complains that the ICC no longer imposes labor protective conditions on sales of rail lines when it has discretionary authority not to do so. Pet. at 13-14. Setting aside whether RLEA's allegations are accurate, RLEA's unhappiness with the ICC's labor protection policies is completely irrelevant to the narrow issue of a district court's authority to enjoin an ICC order presented in this case. To the extent RLEA is dissatisfied with the ICC's exercise of its labor protection authority, RLEA's remedy is to seek direct appellate review of the particular ICC action or to ask Congress to amend the ICA to mandate labor protections in all sales of rail lines. RLEA has already appealed the ICC's refusal to impose labor protection conditions on the sale of SIRC's operations and does not seek certiorari of the Second Circuit's affirmance of the ICC. RLEA has also sought legislation to require the

imposition of labor protective conditions on all sales of rail lines.[11]

Moreover, the examples of "regionalization" cited by RLEA involved sales of rail lines under Section 10901 of the ICA, where the ICC retains discretion to require labor protections. SIRC's lines were sold under ICA Section 10905. In order for a line to be sold under that section, the ICC must have first approved its abandonment. Section 10905 then provides a mechanism for service to be continued, if a bona fide purchaser is willing to risk further deficits. Rather than cause the loss of rail jobs, a result with which

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11 RLEA recently proposed that the ICA be amended to require labor protections in all Section 10901 and Section 10905 sales. RLEA's legislative proposal would also specify that ICC protections could not supersede rights under the RLA. *Establishment of New Short Line and Regional Railroads: Hearings Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce, Science and Transportation*, 99th Cong., 2d Sess. (July 25, 1986) (Prepared Statement of Ole M. Berge, Chairman, RLEA, at 30 and Exh. 12). Shortly thereafter, during congressional consideration of legislation to sell the federal government's interest in Conrail, rail unions sought the attachment of a similar amendment to the Conrail sale bill. While the House agreed to this amendment, the Senate did not, and the labor protection amendment was dropped when Congress passed the Conrail sale bill. Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 4001 *et seq. (1986)* (incorporating Conrail sale provisions). *See also* H.R. Rep. No. 99-1012, 99th Cong., 2d Sess. 250 (1986).

An earlier RLEA effort to obtain legislation requiring mandatory labor protective conditions in all sales of rail lines was also unsuccessful. *See Railroad Transportation Policy Act of 1979: Hearings on S.1946 Before the Senate Comm. on Commerce, Science and Transportation*, 96th Cong., 1st Sess. 536, 544 (1979) (testimony of J.R. Snyder, Chairman, Legislative Committee, RLEA).

RLEA professes concern, Pet. at 14, the sale of SIRC's lines preserved rail employment. These lines would otherwise have been abandoned, with a complete loss of rail positions.

II. The Second Circuit's Decision That the RLA Did Not Require the Payment of Wages for No Work Also Does Not Present an Important Question for This Court

A. Second Circuit's Decision Does Not Conflict With *Galveston Wharves*

In the lower courts, RLEA's fallback position was that, even if the District Court could not order the ICC-mandated sale undone, it could have ordered SIRC to pay its employees during bargaining as if the sale had not occurred. Pet. at 18. The Second Circuit agreed with the District Court that "[s]imply to order SIRC to continue paying the employees without furnishing rail services is not authorized under the RLA because the RLA's purpose is to provide for maintenance of the status quo only to ensure the continued furnishing of rail services." *RLEA v. SIRC*, 792 F.2d at 12. RLEA argues that this holding is in conflict with the Fifth Circuit's *Galveston Wharves* decisions. *Galveston Wharves* arose in an entirely different factual and legal context and is easily distinguishable.

A first, and fundamental, distinction is that *Galveston Wharves* did not involve an ICC-ordered transaction or 28 U.S.C. §§ 2321 and 2342. In *Galveston Wharves*, the employer leased a grain elevator for a short term and eliminated its employment positions at the elevator. *Galveston Wharves*,

351 F.2d at 191. As the court itself noted, the lease of the elevator did not require ICC approval and was not mandated by an ICC order. *Id.* Second, the relief ordered by the Fifth Circuit was premised on a prior judicial finding that the employer had violated the RLA. 368 F.2d at 413. There has been no such finding with respect to SIRC. Indeed, SIRC's position before the lower courts was that it had no duty to bargain in connection with the abandonment or sale of its lines, because of the ICC's exclusive jurisdiction over the cessation of its operations. It was also SIRC's position that, even if the RLA's status quo requirements were applicable, the status quo permitted SIRC to sell its lines and cease operations. This illustrates a third important distinction. In *Galveston Wharves*, the court found that the employer had not gone out of business, but had only leased part of its business for a short term. *Galveston Wharves*, 351 F.2d at 191. The court recognized, however, that an employer might have an absolute right to go out of business. *Id. See First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981). Unlike the Galveston Wharves, SIRC has completely terminated its operations. A fourth difference is that the court found that Galveston Wharves had walked away from its contracts. *Galveston Wharves*, 351 F.2d at 186. That was not the case here. As RLEA recognized in briefs and oral argument to the District Court, SIRC honored the labor protection obligations in its labor agreements. Thus, *Galveston Wharves* does not conflict with the Second Circuit's decision.

B. The RLA Does Not Authorize the Payment of Ghost Wages

The lower courts' refusal to grant RLEA's request for pay for no work was proper. Their statement of the RLA's purpose accords with the statute. *See* 45 U.S.C. § 151a ("The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein . . ."). This Court has similarly recognized that the principal purpose of the RLA is to prevent interruptions to rail operations. *See, e.g., Detroit & Toledo Shore Line Railroad v. United Transportation Union*, 396 U.S. 142, 148 (1969).

In order to maintain labor peace, the RLA's status quo provisions require that both sides maintain the status quo. *Local 553, Transport Workers Union v. Eastern Air Lines, Inc.*, 695 F.2d 668, 678 (2d Cir. 1983). The status quo is work for pay, not pay for no work. Here even-handed application of the status quo was not possible. SIRC had sold its rail operations in accordance with an ICC order. It had no work to be performed. The ICC-ordered sale of SIRC's lines fundamentally altered the relative positions of the parties, making any subsequent "bargaining" meaningless. Under RLEA's proposal, SIRC's employees could enjoy full wages and sit at home indefinitely while the RLA's "purposefully long and drawn out" procedures ran their course. SIRC's unions would have no reason to reach agreement, or even to bargain meaningfully. So long as SIRC was paying full wages, SIRC would have no bargaining leverage whatsoever. Indeed, as this Court has found, the unions would have every incentive in these circumstances to draw out the RLA process

as long as possible. *First National Maintenance Corp. v. NLRB*, 452 U.S. at 681 ("[t]he union's practical purpose . . . will be largely uniform: it will seek to delay or halt the closing."). A pay while bargain order would also have produced anomalous and inequitable results. While those former SIRC employees who took advantage of new employment opportunities with NYSW or SIRY work for pay, those who refused to even apply for a new job would get paid for no work.

C. RLEA's Pay While Bargain Request Is, In Effect, a Collateral Attack on the ICC Order

A pay while bargain order would also be, in effect, a collateral attack on the ICC sale order. By that order, SIRC was authorized to cease railroad operations altogether, operations that the ICC agreed were unprofitable and could be abandoned, but for NYSW's purchase offer. An injunction directing SIRC to pay employees for no work would have prevented SIRC from the benefit of the ICC order as surely as a judicial stay of that order. Indeed, SIRC would be worse off; it would no longer be receiving revenues from its discontinued rail operations, while at the same time being required to pay wages. This would directly conflict with ICA Section 10905, which this Court recognized "was intended to abbreviate the period during which a carrier is obligated to furnish financially burdensome service." *Hayfield Northern Railroad Co. v. Chicago & North Western Transportation Co.*, 467 U.S. 622, 635 (1984). RLEA's request for pay for no work would also amount to a grant of labor protection during exhaustion of RLA procedures. Congress and the

courts have, however, determined that labor protective conditions are not authorized in Section 10905 sales. *See Simmons v. ICC*, 760 F.2d 126 (7th Cir. 1985), *cert. denied*, 106 S. Ct. 791 (1986).

CONCLUSION

RLEA has failed to show that the Second Circuit's decision presents a novel or important issue requiring this Court's attention, and its petition should be denied.

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APPENDIX

APPENDIX A

Principal subsidiaries and affiliates of CSX, Inc. are as follows:

1. CSA Acquisition Corporation, a wholly-owned subsidiary of CSX, Inc., has an interest in Sea-Land Corporation.

2. CSX Resources, Inc., a wholly-owned subsidiary of CSX, Inc., has partial interests in:

    a. Eastern Hardwoods, Inc.

    b. Mid-Allegheny Corporation. Mid-Allegheny has an interest in New Gauley Coal Corp., which in turn has an interest in Littleton Fuel Company.

3. Chesapeake and Ohio Railway Company.

4. CSX Transportation, Inc. (formerly Seaboard System Railroad) has a partial interest in the following:

    a. Augusta and Summerville Railroad Company;

    b. Beaver Street Tower Company;

    c. Central Transfer Railway and Storage Company;

    d. Nashville & Decatur Railroad Company;

    e. North Charleston Terminal Company;

    f. Paducah & Illinois Railroad Company;

    g. Winston-Salem Southbound Railway Company;

    h. Woodstock & Blockton Railway Company.

5. CSX, Inc. and various of its wholly-owned subsidiaries have a partial interest in Fruit Growers Express Company.

6. Various subsidiaries of CSX, Inc. have a partial interest in Richmond-Washington Company, which in turn has a partial interest in the Richmond, Fredericksburg and Potomac Railroad Company.

7. Texas Gas Transmission Corporation.

8. American Commercial Lines, Inc.